IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4274 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAKANBHAI JAGABHAI PATEL

Versus

EXECUTIVE ENGINEER

Appearance:

MR MS MANSURI for Petitioner No. 1

MS MAYA DESAI for MR MD PANDYA for Respondents No. 1-2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 15/10/2001

ORAL JUDGEMENT

#. The petitioner has challenged the order passed by the Presiding Officer, Labour Court, Navsari below Exh.3 in Application No.2 of 1999. The petitioner workman has raised the industrial dispute and the aforesaid case was

numbered as Application No.2 of 1999. During pendency of the aforesaid application, the petitioner gave application Exh.3 for interim relief. The dispute in question was regarding the date of superannuation as according to the petitioner, his correct birth date is 12.2.1941 and that he applied to the employer for changing his birth date on the basis of S.R.No.18. The action of the management was accordingly challenged by the petitioner by which he was superannuated with effect from 30.6.1999. In the main reference which was pending at the relevant time before the Labour Court the application for interim relief was given at Exh.3. The Labour Court after giving detailed reasoning, rejected the said application Exh.3. However, while deciding the application for interim relief at Exh.3, the Labour Court also rejected the main reference No.2 of 1999 by passing the order below Exh.1.

#. It was argued by Mr.Mansuri for the petitioner that it was not open for the learned Labour Judge to dispose of the entire case while deciding Exh.3 which was only for interim relief. He also pointed out that the main case was not posted for final hearing at all, and, therefore, the order dismissing the main reference is contrary to law.

#. I have heard Mr.Mansuri and Ms.Maya Desai for Mr.M.D.Pandya for the respondents.

#. It is required to be noted that, at the relevant time, the Labour Judge was required to decide only Exh.3 which was for interim order and only Exh.3 was posted for hearing, and, therefore, there was no question to decide the main reference being application No.2 of 1999. It is no doubt true that the Labour Judge has given detailed reasons at the time of deciding Exh.3. However, the said reasoning can be said to be applicable only for the purpose of deciding Exh.3. The Labour Court, therefore, should not have decided the main application No.2 of 1999 while deciding Exh.3. Therefore, while confirming the order passed below Exh.3, the main application, i.e. application No.2 of 1999, is restored to the file of the Labour Court. The main application may be decided on its own merits and in accordance with law. It is clarified that, observations made in the order at the time of deciding Exh.3 should be treated only as tentative observations and the main reference should be decided on its own merits and without being influenced by the observations made in the order below Exh.3. So, while confirming the order passed below Exh.3, I remand the matter back to the Labour Court for deciding the main

reference, being Reference No.2 of 1999, on its own merits. The Labour Court may dispose of the aforesaid Application No.2 of 1999 as early as possible and preferably by 31.1.2002. The petition is accordingly allowed to the aforesaid extent. Rule is made absolute with no order as to costs.

(P.B.Majmudar,J)

(pathan)